

In the Court of Appeals of the State of Alaska

Angelo Joseph,

Appellant,

v.

Angelo Joseph and State of Alaska,

Appellees.

Court of Appeals Nos. **A-13957/**

A-13958

Order

Date of Order: **3/4/22**

Trial Court Case Nos. **3AN-18-09153CI; 3AN-21-06712CI**

The Public Defender Agency has filed these appeals on behalf of Angelo Joseph. Both appeals arise from successive applications for post-conviction relief (they were his second and third applications). The appeal in Case No. A-13957 is late, having been filed nearly 850 days after the entry of judgment. The appeal in Case No. A-13958 is timely.

The agency has filed a motion to accept the late-filed appeal in A-13957, asserting that the delay in filing Joseph’s appeal in his second PCR is due to the ineffective assistance of the attorney who was appointed to represent him in the second PCR. That attorney was appointed under Administrative Rule 12(e) because Joseph’s second PCR was a *Grinols* PCR — *i.e.*, Joseph alleged that the attorney who represented him in his first PCR had provided ineffective assistance of counsel. *See Grinols v. State*, 10 P.3d 600, 624 (Alaska App. 2000)(in a successive PCR application alleging prior PCR attorney was ineffective, a trial court “has the authority, under the due process clause of the Alaska Constitution, to appoint counsel for a defendant if the court concludes that a lawyer's assistance is needed for a fair and meaningful litigation of the defendant’s claim.”)

According to the agency’s pleadings, the second PCR was dismissed

because the appointed attorney failed to respond to the trial court's orders and effectively abandoned Joseph. Joseph (who was now *pro se*) responded to the dismissal by filing a third PCR, seeking to litigate the *Grinols* issues that his appointed attorney had failed to litigate in the second PCR. Joseph's third PCR application was dismissed as successive without any appointment of counsel.

Joseph timely appealed the dismissal of the third PCR with the assistance of the Public Defender Agency. The agency also filed the late-filed appeal in the second PCR on Joseph's behalf. Lastly, the agency filed a motion under Civil Rule 60(b)(6) in the second PCR, requesting that the case be reopened and Joseph be allowed to litigate his original *Grinols* claim with different appointed counsel.

Currently pending before this Court is Joseph's motion to accept his late-filed appeal in his second PCR along with four additional motions: (1) to consolidate the two appeals, (2) to stay them until the superior court rules on Joseph's pending Rule 60(b) motion in A-13598 for relief from judgment, (3) to appoint Joseph representation at public expense under Administrative Rule 12(e), and (4) to allow an extension of time to pay the filing fee or to apply for a filing fee reduction in each appeal.

The State takes no position regarding the motions for appointed counsel and for an extension regarding the filing fees. But the State opposes the other motions. In the State's view, this Court lacks the authority to accept the late appeal, and should instead order Joseph to file a fourth PCR to litigate whether his second PCR attorney, by not filing an appeal of the judgment in that case, was ineffective. The State opposes the stay pending the superior court's decision on Joseph's Rule 60(b) motion because such a stay may cause delay in resolving the appeal.

After reviewing the pleadings, this Court concludes that both appeals should be lodged, and the motions held in abeyance, until the superior court issues a decision on the agency's Civil Rule 60(b) motion.

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March 4, 2022

Accordingly, **IT IS ORDERED:**

Both appeals are lodged, and the motions held in abeyance, until the superior court issues a decision on the agency's Rule 60(b) motion. The superior court is directed to provide this Court with a copy of its decision.

Entered at the direction of Chief Judge Allard.

Clerk of the Appellate Courts

A handwritten signature in black ink, appearing to read 'Kaitlin D'Eimon', written over a horizontal line.

Kaitlin D'Eimon, Deputy Clerk

cc: Trial Court Clerk

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